IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1120 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ?**-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

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M/S. FAG PRECISION BEARING LTD. - Appellant(s)
Versus
THE REGIONAL DIRECTOR - Defendant(s)

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Appearance :
NANAVATI ASSOCIATES for Appellant(s) : 1,
MR HEMANT S SHAH for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 19/07/2007

ORAL JUDGMENT

1. Admit. Mr.H.S.Shah, learned advocate for the defendant waives service of notice of admission.

2. M/s. FAG precision bearing Limited, appellant has filed this appeal under Section 82 of the Employees' State Insurance Act, 1948 (herein after referred to as 'ESI Act') against the judgment and award dated 21/11/2002 passed by the Judge, Labour Court in ESI Application No.34 of 1989. By the impugned judgment, the learned Judge has rejected the application of the applicant which has been filed under Section 75 of the ESI Act which provides that matter to be decided by the Employee's Insurance Court and against the order dated 30/12/2005 passed by the learned Judge, Labour Court in ESI Review Application No.1 of 2003. Earlier the matter was placed before this Court for hearing on 16/7/2007. In view of the observations made by this Court on 16/7/2007, the matter is taken up for final disposal.

3. M/s. FAG Precision Bearing Ltd. is a company registered under the provisions of the Companies Act, 1956 and is carrying on business of manufacturing of ball-bearing etc. The company is

covered under the Employees' State Insurance Act, 1948 and it has been given a code number.

4. Mr.Calla, learned advocate who is appearing on behalf of the appellant has set out following facts in support of the appeal:

4.1) It has been stated that from December, 1978 to March, 1980, the Company had got executed certain work from its contractors for which, payments of Rs.99,261.88 and Rs.1,187/- were made to the respective contractors.

4.2) It is the case of the appellant-company that right from the year 1974 to 1983, there were a correspondence ensue in connection with the payment dues, which is concerned with the dispute in the present appeal. However, on 15/7/1983, the department has issued notice for recovery of an amount of Rs.7,304.40 towards employees' contribution at the rate of 7% on the aforesaid amounts along with other short payment. The department has issued another notice on 19/5/1987

for recovery of an amount of Rs.19,313.94, which also included the amount paid by the company to its contractors between the period from 1970 to 1980. The department has issued another notice on 24/11/1987 for recovery of an amount of Rs.96,201.90 being the Employees' Contribution at the rate of 7% on the total bill amount of Rs.13.26 lacs paid by the Company to its contractors for building repairs and other repairs, etc. for the period between 1980 and 1985. On 29/12/1987, the department has issued another recovery notice under Section 45-A for an amount of Rs.10,489.45 which consisted of the principal amount of Rs.7,304.40 plus interest of Rs.2,685.57 and surcharge of Rs.499.49. On 29/12/1987, the department again issued another notice under Section 45-A for the period from 1970 to 1980 for an amount of Rs.32,253.20 which consisted of principal amount of Rs.19,313.94 and interest of Rs.12,940.07. In view of the same, the department sought total recovery of Rs.1,65,562.89 from the company under the aforesaid notices. Thereafter also, the department has issued notice on 1/8/1988 calling upon the

Company to pay the said amount else, recovery actions were threatened.

4.3) On 10/4/1989, the Company has filed ESI Application No.34 of 1989 in the ESI Court at Ahmedabad seeking relief inter alia quashing and setting aside the various notices for recovery served under Section 45-A of the Act and restraining orders against the Department from taking any coercive measures to recover the dues. The company had also filed application for interim injunction in the main matter. The ESI Court was pleased to grant injunction on a condition that the company furnishes bank guarantee of Rs.1,40,000/- which was furnished by the company as against total recovery of Rs.1,38,944.56. The ESI Court, Ahmedabad by judgment and order dated 22/11/2002, pleased to dismiss the ESI Application No.34 of 1989.

4.4) In view of the same, the department has issued recovery certificates on 26/2/2003 for two amounts i.e. Rs.57,345/- (Rs.19,313.94 plus interest till

date) and Rs.24,375/- (Rs.7,304.40 plus interest till date) totaling to Rs.1,720/- plus penalty of Rs.6,103/- i.e. total Rs. 87,823/-.

4.5) In view of the same, the company has filed a Review Application (ESI) No.1 of 2003 seeking review of the order dated 22/11/2002. In between, on 8/5/2003, the department, under the provisions of the ESI Act, issued order of attachment of the bank account of the appellant-company pursuant to the recovery certificates dated 26/2/2003.

4.6) Thereafter, the company has filed a stay application on 27/5/2003 in the pending Review Application seeking restraining orders against the department from taking any coercive action pursuant to the impugned notices and prayer for release of the bank account, which was attached. The learned ESI Court passed an order restraining the department from taking any action pursuant to the impugned notices and releasing the bank account of the appellant, observing that the appellant has already furnished bank guarantee of Rs.1,40,000/-

in the original proceedings, which was not withdrawn till the date of the said order. The learned ESI Court was pleased to reject the Review Application on 30/12/2005.

5. Being aggrieved and dissatisfied with the said order, the present appeal has been filed somewhere on 24/4/2006. It appears that as there was a delay in filing the appeal, the learned advocate for the appellant has stated that they will file the delay application in this behalf. Thereafter, the application for condonation of delay came up before this Court and the Division Bench of this Court (Coram:A.R.Dave and H.N.Devani, J.J.) has condoned the delay vide order dated 20/12/2006. Thereafter, the matter was placed for hearing before this Court.

6. Main contention of Mr.Calla, learned advocate is that under Section 45-A of the ESI act, the ESI Court cannot consider the employees of the applicant-company along with the employees of the contractors. He has further submitted that the ESI

Court has not considered provisions of section 2(22) of the ESI Act and also not considered Section 45-A of the Act also. In support of his contention, Mr.Calla, learned advocate has relied upon the judgment of the High Court of Karnataka in the matter of Hegde & Golay Ltd. vs. ESIC and another, reported in 1982 LLJ (1) 48.

7. When the notice has been issued, Mr.Hemant Shah, learned advocate appears on behalf of the defendant-ESI Corporation. He has stated that matter is covered by the judgment of the Hon'ble Apex Court in the case of Employees State Insurance Corporation vs. Harrison Malayalam Private Limited, reported in AIR 1993 SC 2655. Mr.Shah, learned advocate has stated that aforesaid point is also covered by the judgment of the Hon'ble Apex Court in the case of Royal Talkies, Hyderabad and others vs. Employees State Insurance Corporation, reported in (1978) 4 SCC 204. In the said case, the Hon'ble Apex Court has held in para 15 that the primary test in the substantive clause being thus wide, the employees of the canteen and the cycle stand may be

correctly described as employed in connection with the work of the establishment. A narrower construction may be possible but a larger ambit is clearly imported by a purpose-oriented interpretation. The whole goal of the statute is to make the principal employer primarily liable for the insurance of kindred kinds of employees on the premises, whether they are there in the work or are merely in connection with the work of the establishment.

8. Reliance is also placed upon the Division Bench judgment of this Court (Coram:N.J.Pandya and A.R.Dave, J.J.) in the case of Regional Director, ESI Corporation vs. Saraspur Mills Ltd. and another, reported in 1998 (1) GLR 581. The Division Bench, after relying upon the aforesaid judgment, observed in para 5 that similarly, in the instant case also the company has a spinning unit, which of necessity, will have some entangled yarn in the bobbins in the course of spinning which has to be removed for smooth functioning of the Mill. On the one hand, the company will be earning out of

that waste yarn by selling it, which eventually may be used by the purchaser for its own purpose and on the other the company will be getting back the bobbins after removal of the yarn. There can be no manner of doubt whether the work thus done by the employee whether contract or not, the work is in connection with the work of the establishment.

9. Mr.Shah, learned advocate has stated that in the aforesaid judgment, the Division Bench of this Court has also placed reliance on the judgment of the Hon'ble Apex Court in the case of Regional Director, ESI Corporation vs. S.I. Flour Mills (P) Ltd., reported in AIR 1986 SC 1686.

10. Mr.Calla, learned advocate has stated that one of his contentions is that when Section 45-A has been invoked by the Section, then they ought to have liberty of being heard. In support of the same, he has relied upon the judgment of the Hon'ble Apex Court in the case of Royal Talkies, Hyderabad and others vs. Employees State Insurance Corporation, reported in (1978) 4 SCC 204 wherein in para 22,

the Hon'ble Supreme Court has given direction to the ESI Corporation to give an opportunity of being heard to the employer. It is no doubt true that the contention of Mr.Calla, learned advocate is well founded but from the facts which I have set out earlier, it appears that department has issued notices from time to time and opportunity of being heard is also given.

11. Even after the order passed, department has issued recovery certificates and thereafter, the company has filed review application on 30/4/2003. The said review application has been rejected on 30/12/2005.

12. It is the case of the appellant-company that Corporation is collecting money form the company as well as from the contractors of the company and therefore, there is a question of double payment. Law do not envisage double payment. Though aforesaid contention was raised by the learned advocate Mr.Calla before this Court, the said contention has not been made properly before the

authority and the authority has not considered the same in this behalf.

13.However, Mr.Hemant Shah, learned advocate stated that if that is so, if the appellant makes representation of double payment and the Corporation will take necessary steps in this behalf.

14.In view of the same, appeal is dismissed. Stay granted by this Court vide order dated 26/4/2006 is also vacated. The appellant is directed to pay the amount by 31/8/2007 to the respondent-corporation.

(K.M.Mehta, J.)

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